



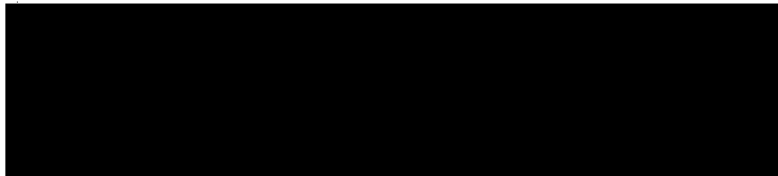
U.S. Department of Justice

Immigration and Naturalization Service

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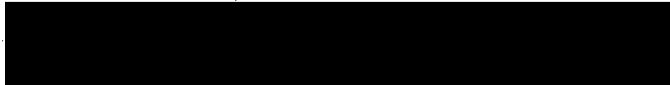
Office: Vermont Service Center

Date:

DEC 29 2000

IN RE: Petitioner:

Beneficiary:



Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(A)

IN BEHALF OF PETITIONER:

Self-represented

Warning: This document is to
prevent clearly marked
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a federal government agency. The petitioner seeks to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(A), as an alien of extraordinary ability in the sciences. The director determined the petitioner had not established that the beneficiary has earned the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the Service regulation at 8 C.F.R. 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that the beneficiary has sustained national or international acclaim at the very top level.

The petitioner seeks to employ the beneficiary as a pharmacokinetic reviewer. The regulation at 8 C.F.R. 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major,

international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence which, the petitioner claims, meets the following criteria.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The petitioner states that the beneficiary "received an 'On-the-Spot' award for his outstanding achievements as a reviewer in [REDACTED] This is an internal award, presented by the petitioner itself. The petitioner has not demonstrated that the On-the-Spot award is nationally or internationally recognized. The award simply recognizes the beneficiary's "significant review output," and thus appears to constitute the type of internal award routinely presented to especially productive employees.

The petitioner also cites the beneficiary's research fellowships and teaching assistantships, which amount to financial support for the beneficiary's then-ongoing studies.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

The beneficiary is a member of the American Association of Pharmaceutical Scientists, but the record contains no documentation from the association to establish its membership requirements.

The petitioner states that the beneficiary "was also initiated as an active member of the [REDACTED] Chapter of the [REDACTED] Honor Society [REDACTED] based on his academic performance." Academic performance is not an outstanding achievement in the field, because academic study is not an occupation or field of endeavor. Furthermore, the petitioner has not shown that the decision to initiate the beneficiary was made at the national or international level, rather than by local chapter officials. The only [REDACTED] documentation in the record is the beneficiary's membership certificate, which does not list the society's membership requirements. The certificate also identifies the chapter as [REDACTED] rather than [REDACTED] as the petitioner states.

Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought.

Such evidence shall include the title, date, and author of the material, and any necessary translation.

The petitioner submits evidence that other scientists have cited the beneficiary's research in their publications. Citation of the beneficiary's work, however, does not establish that the articles containing the citations are "about" the beneficiary or his work. These citations are better understood as a gauge of the field's reaction to the beneficiary's own writings, covered in a separate criterion further below. The same can be said of requests for reprints of the beneficiary's work. Certainly, by no reasonable standard are these private requests "published material."

In response to a request for further evidence, the petitioner states that "the National Library of Medicine, National Institutes of Health has published an article" which includes an abstract by the beneficiary. The document is not so much an article as a self-described "Bibliography with Abstracts," and it appears to be essentially a compendium of technical abstracts, reproduced in their entirety. The inclusion in this article of the beneficiary's own writings, among the writings of others in the field, does not establish that the article is "about" the beneficiary. There is no discussion or evaluation of the beneficiary's work; the article is intended as "a survey of the literature."

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

The petitioner asserts that the beneficiary satisfies this criterion based on the very nature of his position, which "has entailed critical review and analysis of research data submitted by the pharmaceutical industry for the approval of new drug products into the US market." The petitioner adds that the beneficiary "also is involved in reviewing the research proposals submitted by scientists from the pharmaceutical industry, U.S. universities and specialized research institutions hired by the pharmaceutical companies developing new drug products." The beneficiary thus acts as a judge of the work of others.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

Several witnesses offer letters in support of the petition. With one exception, all of the witnesses are from the petitioning agency or the University of [REDACTED] College of Pharmacy (where the beneficiary obtained his doctorate). The one exception is a staff scientist at Cygnus, Inc., who states that he has known the beneficiary "for the past ten years," i.e. since approximately

1988, when the petitioner was studying for his master's degree. While these witnesses list various projects in which the beneficiary has participated, such as researching certain cancer drugs, the initial submission contains no clear indication that the beneficiary's work is generally viewed as being among the most important in the field, or that the beneficiary's work is widely known among researchers outside of the University of Georgia and the petitioning entity.

In response to a request for further evidence, the petitioner has emphasized the beneficiary's work with derivatives of an anticancer drug, [REDACTED]. The beneficiary did not discover or synthesize this drug, but rather performed tests with the drug, using samples provided to him. A University of Georgia professor asserts that the beneficiary's work was important to the project.

Along with the above letter, the petitioner has submitted two others from independent researchers. [REDACTED] D.Sc., director of [REDACTED] Pharmaceutical Research, states that the beneficiary's "research publications on pharmacokinetics of anticancer drugs in widely accepted journals . . . have gained international recognition and have had a significant impact on cancer drug research." Dr. [REDACTED] adds that the beneficiary's "expertise in pharmacokinetic and pharmacodynamic modeling . . . is crucial for describing the mechanism of drug effects in the body."

Professor [REDACTED] Ph.D., of Texas Tech University, states that the beneficiary "developed a very sensitive and specific High Performance Liquid Chromatographic method to measure the blood levels of a very important anticancer drug, 5-fluorouracil and its prodrugs. As a research scientist, I know that this assay method is being widely used." Prof. [REDACTED] asserts that the beneficiary's "work in the area of anticancer prodrugs is of immense significance in cancer therapy because these prodrugs will potentially reduce the serious side effects associated with the cancer drugs."

Both of the above witnesses are highly complimentary toward the beneficiary, but their own qualifications and achievements appear to far outweigh those of the beneficiary, who in turn was a student until two and a half years before the filing of this petition.

The record indicates that the beneficiary's research work was in conjunction with his graduate studies. His current position with the petitioner does not appear to involve any original research at all, but rather the evaluation of the work of others.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The petitioner asserts that the beneficiary "has published four peer-reviewed original research articles and ten abstracts in top-rated scientific journals," and has made presentations at national gatherings.

The petitioner has referred to citations of the beneficiary's work, but the documentation submitted with the petition lists only two such citations. Even then, one of those two citations appears in a later article by the beneficiary, and self-citation is plainly not indicative of any wider reputation. Thus, the record establishes at best one independent citation of the beneficiary's published work.

Given the sheer volume of research papers published in scholarly journals each year, it is absurd to hold that publication of one's work in such a journal automatically confers acclaim or demonstrates extraordinary ability.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

The petitioner states that the beneficiary "is a Visiting Scientist at the [petitioning agency] and as such, his pay is limited to the appropriate pay schedule in effect at his pay grade." The petitioner adds that the beneficiary's "salary is within the range for pharmaceutical scientists with his training," and that "his salary potential would be much higher" in private industry. There is neither any evidence nor, indeed, any claim that the beneficiary has, in fact, ever earned significantly high remuneration for his work in the field. We clearly cannot consider "salary potential" because it is speculative and based on career decisions which the beneficiary could have made, but in fact did not make.

The director denied the petition, stating that the petitioner has not shown that the beneficiary has won a lasting reputation as one of the most important and prominent figures in his field.

On appeal, the petitioner requests oral argument for the following reasons:

The request for oral argument is made to discuss the specific requirements and skills for reviewers in the Office of Clinical Pharmacology and Biopharmaceutics, the scarcity of individuals who possess the unique qualifications required within the Office of Clinical Pharmacology and Biopharmaceutics, and the special challenges faced by the [petitioner] in the recruitment and retention of well-qualified individuals in order to accomplish our regulatory responsibilities to the American people.

By seeking to classify the beneficiary as an alien of extraordinary ability, the petitioner has assumed the burden of establishing that the beneficiary enjoys national or international acclaim at the very top of his field. The relative scarcity of workers who are qualified for the position in question, and the resulting difficulty which the petitioner encounters in attempting to fill that position, are irrelevant to whether this beneficiary has earned the acclaim which the statute demands. While the scarcity of qualified workers in an occupational category is a legitimate consideration in some lesser visa classifications, such is not the case in the classification the petitioner has chosen to seek for the beneficiary. Because the request for oral argument addresses factors with no bearing on the beneficiary's eligibility, we must deny the request.

The petitioner discusses activities with which the beneficiary became involved late in 1999, after the petition's filing. The beneficiary's work after the filing date cannot retroactively establish that he was eligible as of that filing date. See Matter of Katigbak, 14 I & N Dec. 45 (Reg. Comm. 1971), in which the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

The petitioner discusses cash awards which the petitioner has presented to the beneficiary, and asserts that these awards are not "just routine awards given in an organization." It remains that the only individuals considered for these awards are employees of the petitioning organization.

Additional letters accompany the appeal, mostly discussing the beneficiary's work with 5-FU-derived anticancer prodrugs and his current work with the petitioning government agency. Because the beneficiary is current a reviewing officer at an agency with regulatory control over pharmaceutical companies, it is not surprising that officials of several such companies are familiar with the beneficiary, as they evidently would be with any other worker holding the position in question. With regard to the beneficiary's research work, we do not conclude that recognition arising from involvement with a single project (5-FU) is sufficient to demonstrate sustained national acclaim. As noted above, the beneficiary conducted research as a student and then almost immediately began his current government job, and does not appear to have had any sort of career as a researcher in his own right.

The plain language of the statute demands "extensive documentation" of sustained national or international acclaim. While the petitioner has submitted copious documentation, much of it falls outside of the regulatory criteria and very little of it even approaches the standard of demonstrating sustained national or international acclaim.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States.

Review of the record, however, does not establish that the beneficiary has distinguished himself in the field of pharmacokinetics to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the beneficiary has earned some respect among his peers in government and industry, but it does not persuasively show that the beneficiary's achievements set him significantly above almost all others in his field. While we do not minimize the difficulty which the petitioner may encounter in filling the beneficiary's position, the statute and regulations make no provision for worker shortage as a factor suitable for consideration; at issue is the merit of the beneficiary, rather than the needs of the petitioner. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.